



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/616,472	07/14/2000	Whitney Durand	AD-1	6507

7590

04/05/2006

K. Wood Herren
Bradley Arant Rose & White LLP
2001 Park Place
Suite 1400
Birmingham, AL 35203

EXAMINER

FRENEL, VANEL

ART UNIT

PAPER NUMBER

3626

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/616,472

Applicant(s)

DURAND, WHITNEY

Examiner

Vanel Frenel

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 175-186 and 199-208 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 175-186 and 199-208 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/10/06 has been entered.

Notice to Applicant

2. This communication is in response to the RCE filed on 2/10/06. Claims 175-178, 184-186 have been amended. Claims 1-174 and 187-198 have been cancelled. Claims 199-208 have been added. Claims 175-186 and 199-208 are pending.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 175-186 and 199-208 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry et al (5,241,466) in view of Krim (2002/0072925) and further in view of Mindrum et al (6,340,978).

(A) As per claim 175, Perry discloses a method of providing a plurality of participants with the ability to effect choices about the future care of said participants, said method comprising receiving from an input user, via an interactive user interface accessible through the internet, raw data relevant to the future care of a participant should said participant prior to death become incapacitated (Col.5; lines 38-68 to Col.6, line 33); receiving request from an output user identifying the occurrence of an incapacitated state in said participant, verifying that said request includes said unique identification parameter (See Krim, Page 1; Paragraph 0005, Page 2, Paragraphs 0018-0021); and communicating said information product to an output recipient (See Krim, Page 3, Paragraph 0038); providing said input user an identification instrument comprising a unique identification parameter corresponding to said participant (See Krim, Page 2, Paragraphs 0018-0021).

Perry and Krim do not explicitly disclose that the method having providing via said interface guidance information comprising at least one input form, said at least one input form comprising electives available to said participant regarding said future care, and reference information associated with said available electives;

analyzing said available electives in response to input by said input user to provide via said interface analysis information regarding said future care to allow informed choices of said electives to be made;

receiving from said input user via interface at least one election of at least one of said electives;

storing in a computer-readable registry end-of-life and said unique identification parameter in the form of an information set corresponding to said participant, said end-of-life information comprising said received raw data and said at least one election;

if so, generating an information product derivative of said information set comprising said participant's election corresponding to said incapacitated state, said information product being generated in a form that is enforceable in the jurisdiction from which said request was received.

However, these features are known in the art, as evidenced by Mindrum. In particular, Mindrum suggests that the method having providing via said interface guidance information comprising at least one input form, said at least one input form comprising electives available to said participant regarding said future care (See Mindrum, Col.4, lines 13-67) , and reference information associated with said available electives (See Mindrum, Col.4, lines 13-67);

analyzing said available electives in response to input by said input user to provide via said interface analysis information regarding said future care to allow informed choices of said electives to be made (See Mindrum, Col.3, lines 27-67);

receiving from said input user via interface at least one election of at least one of said electives (See Mindrum, Col.3, lines 27-67);

storing in a computer-readable registry end-of-life and said unique identification parameter in the form of an information set corresponding to said participant, said end-

of-life information comprising said received raw data and said at least one election (See Mindrum, Col.4, lines 13-67);

if so, generating an information product derivative of said information set comprising said participant's election corresponding to said incapacitated state, said information product being generated in a form that is enforceable in the jurisdiction from which said request was received (See Mindrum, Col.3, lines 27-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Mindrum within the collective teachings of Perry and Krim with the motivation of providing a user interface which can be accessed over a computer, either as stand-alone or a network, or as in memorial such as in a headstone (See Mindrum, Col.2, lines 28-31).

(B) As per claim 176, Krim discloses the method wherein said analysis information is selected from the group consisting of:

a. a measurement of an outcome for at least one of said participant's choices regarding care;

b. a prediction of an outcome for at least one of said participant's choices regarding care;

a comparison of alternative choices regarding said participant's care; and interaction of drugs identified by participant in said end-of-life information (Page 3, Paragraphs 0040-0047). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

(C) As per claim 177, Krim discloses the method wherein said first providing step further comprises providing a second input form to said user for subsequent submission (Page 3, Paragraph 0036-0039).

(D) As per claim 178, Krim discloses the system wherein said second input form is selected from the group consisting of an executable document and an election form (Page 3, Paragraph 0036-0039).

(E) As per claim 179, Krim discloses the method wherein said end-of-life information is selected from the group consisting of:

an authorization to rely on a copy of an original document;

an authorization to rely on a summary of an original document;

a designation of at least one medication;

a designation of at least one allergy;

a designation of at least one health condition;

a designation of at least one person to be contacted in case of emergency;

a designation of at least one physician;

emergency health information;

an end-of-life choice', an advance directive; g.h.

a Do-Not-Resuscitate Order;

a document signed by a physician concerning medical care associated with

Art Unit: 3626

an end-of-life condition', m. an authorization to donate an organ (See Krim, Page 3, Paragraph 004z). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

n. output recipient information', o. enforcement information', medical information', and a portion of an item selected from the group a through p, above.

(F) As per claim 180, Krim discloses the system wherein, when said end-of-life information is an end-of-life choice, said end-of-life choice is a choice selected from the group consisting of:

a palliative care choice;

a comfort care choice;

a residence choice (See Krim, Page 3; Paragraph 0046). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

a religious choice', and

a spiritual choice.

(G) As per claim 181, Perry discloses the system wherein, when said end-of-life information is an advance directive, said advance directive is an advance directive selected from the group consisting of: a living will (See Perry, Col .3, lines 19-36). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

a medical power of attorney',

a selection of an end-of-life condition response;
a selection of medical treatment', and
a refusal of medical treatment.

(H) As per claim 182, Krim discloses the method wherein said guidance information comprises: a designation of at least one end-of-life condition', and a designation of at least one end-of-life condition response, wherein said input user can choose at least one of said at least one end-of-life response for response to at least one of said at least one end-of-life condition (See Krim, Page 1, Paragraph 0003).

(I) As per claim 183, Krim discloses the method wherein said information product is selected from the group consisting of: b.

an authorization to rely on a copy of an original document',
an authorization to rely on a summary of an original document',
a designation of at least one medication',
a designation of at least one allergy',
d. a designation of at least one health condition',
a designation of at least one person to be contacted in case of emergency.
a designation of at least one physician',
emergency health information',
an end-of-life choice',
an advance directive',

Art Unit: 3626

g.

h.

a Do-Not-Resuscitate Order;

a document signed by a physician concerning medical care associated with

an end-of-life condition',

an authorization to donate an organ (See Krim, Page 3., Paragraph 004z). Note that this

limitation has been met by Markush group (i.e., alternative), and incorporated herein.

output recipient information',

enforcement information',

m. medical information',

a summary of an information product selected from the group consisting

of a through p, above;

a copy of an information product selected from the group consisting of a

q. through q, above; and

a report concerning said end-of-life information.

(J) As per claim 184, Krim discloses the method wherein said information set comprises said end-of-life information stored in a standardized form (See Krim, Page 4., Paragraph 0051).

(K) As per claim 185, Krim discloses the method wherein said generating step comprises translating said information set into an information product in a language other than that native to said input user (See Krim, Page 5, Paragraphs 0064-0065).

(L) As per claim 186, Krim discloses the method wherein said generating step comprises generating an information product legally enforceable in a jurisdiction other than that in which said participant resides (See Krim, Page 1, Paragraphs 001 1-0015).

(M) As per claim 199, Perry discloses a method of providing a participant with the ability to effect choices about the future care of said participant should said participant prior to death become incapacitated (See Perry, Col.5; lines 38-68 to Col.6, line 33), said method comprising:

upon receiving request from an output user identifying the occurrence of an incapacitated state in said participant (See Krim, Page 1; Paragraph 0005, Page 2, Paragraphs 0018-0021),

and communicating said information product to an output recipient (See Krim, Page 3, Paragraph 0038).

Perry and Krim do not explicitly disclose that the method having providing via an interactive user interface accessible through the internet guidance information comprising at least one input form, said least one input form comprising electives available to said participant regarding said future care, and reference information associated with said available electives;

analyzing said available electives in response to input by said input user to provide via said interface analysis information regarding said future care to allow informed choices of said electives to be made;

receiving from said input user via interface at least one election of at least one of said electives;

storing in a computer-readable registry end-of-life information in the form of an information set corresponding to said participant, said end-of-life information comprising said at least one election;

generating an information product derivative of said information set comprising said participant's election corresponding to said incapacitated state.

However, these features are known in the art, as evidenced by Mindrum. In particular, Mindrum suggests that the method having providing via an interactive user interface accessible through the internet guidance information comprising at least one input form, said least one input form comprising electives available to said participant regarding said future care, and reference information associated with said available electives (See Mindrum, Col.4, lines 13-67);

analyzing said available electives in response to input by said input user to provide via said interface analysis information regarding said future care to allow informed choices of said electives to be made (See Mindrum, Col.3, lines 27-67);

receiving from said input user via interface at least one election of at least one of said electives (See Mindrum, Col.3, lines 27-67);

storing in a computer-readable registry end-of-life information in the form of an information set corresponding to said participant, said end-of-life information comprising said at least one election (See Mindrum, Col.4, lines 13-67);

generating an information product derivative of said information set comprising said participant's election corresponding to said incapacitated state (See Mindrum, Col.3, lines 27-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Mindrum within the collective teachings of Perry and Krim with the motivation of providing a user interface which can be accessed over a computer, either as stand-alone or a network, or as in memorial such as in a headstone (See Mindrum, Col.2, lines 28-31).

(N) As per claim 200, Krim discloses the method wherein said analysis information is selected from the group consisting of:

a a measurement of an outcome for at least one of said participant's choices regarding care;

b. a prediction of an outcome for at least one of said participant's choices regarding care;

a comparison of alternative choices regarding said participant's care; and interaction of drugs identified by participant in said end-of-life information (See Krim, Page 3, Paragraphs 0040-0047). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

(O) As per claim 201, Krim discloses the method further comprising a second input form to said user for subsequent submission (Page 3, Paragraph 0036-0039), wherein said input form is selected from the group consisting of an executable document and an election form (Page 3, Paragraph 0036-0039). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

(P) As per claim 202, Krim discloses the method wherein said end-of-life information is selected from the group consisting of:

- a. an end-of-life choice;
- b. and advance directive;
- c. a Do-Not-Resuscitate Order; and
- d. an authorization to donate an organ (See Krim Page 3, Paragraphs 0042-0043).

Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

(Q) As per claim 203, Krim discloses the method wherein when said end-of-life information is an end-of-choice, said end-of-life choice is a choice selected from the group consisting of:

- a. a palliative care choice;
- b. a comfort care choice;
- c. a residence choice;

Art Unit: 3626

d. a religious choice; and

a a spiritual choice (See Krim, Page 5, Paragraph 0064). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

(R) As per claim 204, Krim discloses the system wherein, when said end-of-life information is an advance directive, said advance directive is an advance directive selected from the group consisting of:

a. a living will (See Krim, Page 5, Paragraph 0064). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

b. a medical power of attorney;

c. a selection of an end-of-life condition response;

d. a selection of medical treatment; and

e. a refusal of medical treatment.

(S) As per claim 205, Krim discloses the method wherein, when said guidance information comprises a designation of at least one end-of-life condition (See Krim, Page 5, Paragraph 0064). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein; and a designation of at least one end-of-life condition response, wherein said input user can choose at least one of said at least one end-of-life response for response to at least one of said at least one end-of-life condition (See Krim, Page 5, Paragraph 0064). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.

(T) As per claim 206, Krim discloses the method wherein, when said information product is selected from the group consisting of:

- a. an end-of-life choice (See Krim, Page 5, Paragraph 0064). Note that this limitation has been met by Markush group (i.e., alternative), and incorporated herein.
- b. an advance directive;
- c. a Do—Not-Resuscitate Order;
- d. an authorization to donate an organ;
- e. a summary of an information product selected from the group consisting of: a through d, above;
- f. a copy of an information product selected from the group consisting of a through e, above; and
- g. a report concerning said end-of-life information.

(U) As per claim 207, Mindrum discloses wherein said generating step comprises translating said information set into an information product in a language other than that native to said input user (See Mindrum, Col.1, lines 58-67).

(V) As per claim 208, Mindrum discloses wherein said generating step comprises generating an information product legally enforceable in a jurisdiction other than that in which said participant resides (See Mindrum, Col.16, lines 8-20).

Response to Arguments

5. Applicant's arguments filed on 2/10/06 with respect to claims 175-186 and 199-208 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not the applied art teaches method and system for creating a commemorative presentation (2003/0197721).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/616,472

Page 17

Art Unit: 3626

V.F

V.F

March 31, 2006


C. LUKE GILLIGAN
PATENT EXAMINER